

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

CATHERINE GORDON, JAMES SCHAFER,  
TERESA THOMPSON, PAMELA MIKA, JENNIFER  
PFENTNER AND DIANA GALDON,  
*on behalf of themselves and all other employees similarly  
situated,*

*Plaintiffs,*

v.

KALEIDA HEALTH, et al.,

*Defendants.*

PLAINTIFFS' MOTION FOR  
CONSIDERATION OF  
ADDITIONAL AUTHORITY

Civil Action  
No. 08-CV-0378 (WMS)

Plaintiffs respectfully move this Court for its consideration of the following decisions as additional authority in support of plaintiffs' motion for Rule 23 class certification currently pending before the Court (Dkt. No. 408). The following decisions, copies of which are attached hereto, further support plaintiffs' argument that class certification should be granted.

EXHIBIT A: *In re Deepwater Horizon*, 739 F.3d 790, 815 (5th Cir. 2014) (joining the Second, Sixth, Seventh and Ninth Circuits in rejecting interpretation of *Comcast* that precludes certification under Rule 23(b)(3) "in any case where the class members' damages are not susceptible to a formula for classwide measurement." The Fifth Circuit found this to be a misreading of *Comcast* and an argument inapplicable to cases where Rule 23 certification is based on predominating common issues of liability).

EXHIBIT B: *Scheer v. Food Scope Am., Inc.*, 12 CIV. 594 AT, 2014 WL 123305, at \*8 (S.D.N.Y. Jan. 10, 2014) (citing *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 123 n. 8 (2d Cir. 2013) in holding that individualized damages calculations do not defeat Rule 23(b)(3)'s predominance requirement).

Dated: February 24, 2014

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